

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBBIN FRANKLIN, } Case No. EDCV 10-850 JC
Plaintiff, }
v. }
MICHAEL J. ASTRUE, } MEMORANDUM OPINION
Commissioner of Social }
Security, }
Defendant. }

I. SUMMARY

On June 22, 2010, plaintiff Robbin Franklin (“plaintiff”) filed a Complaint seeking review of the Commissioner of Social Security’s denial of plaintiff’s application for benefits. On December 1, 2010, the matter was transferred and referred to the current Magistrate Judge. The parties thereafter filed consents to proceed before the current Magistrate Judge. On December 23, 2010, the parties filed a Joint Stipulation (“JS”) setting forth their respective positions on plaintiff’s claims. On September 16, 2011, the matter was formally reassigned to the instant Court for final disposition. The Court has taken this matter under submission without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15.

1 Based on the record as a whole and the applicable law, the decision of the
 2 Commissioner is AFFIRMED. The findings of the Administrative Law Judge
 3 (“ALJ”) are supported by substantial evidence and are free from material error.¹

4 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE
 5 DECISION**

6 On June 15, 2004, plaintiff filed an application for Supplemental Security
 7 Income benefits. (Administrative Record (“AR”) 18). Plaintiff asserted that she
 8 became disabled on January 10, 2000 due to anxiety and nervousness. (AR 18,
 9 62-63). The ALJ examined the medical record and heard testimony from plaintiff
 10 (who was not represented by counsel) on November 15, 2005 (“2005 Hearing”).
 11 (AR 178-92; 502-16).

12 On February 3, 2006, the ALJ determined that plaintiff was not disabled
 13 through the date of the decision (“2006 Decision”). (AR 18-24). On January 4,
 14 2007, the Appeals Council denied plaintiff’s application for review of the ALJ’s
 15 2006 Decision. (AR 5).

16 On May 21, 2008, in Case No. EDCV 07-129 RC, a judgment was entered
 17 in the United States District Court for the Central District of California, reversing
 18 and remanding the case for further proceedings due to legal error in the ALJ’s
 19 findings at step five of the sequential evaluation process. (AR 218-29). The
 20 Appeals Council, in turn, remanded the case for a new hearing.² (AR 232). On
 21 October 28, 2008, the ALJ held a post-remand hearing (“2008 Hearing”) during

23 ¹The harmless error rule applies to the review of administrative decisions regarding
 24 disability. See Batson v. Commissioner of Social Security Administration, 359 F.3d 1190, 1196
 25 (9th Cir. 2004) (applying harmless error standard); see also Stout v. Commissioner, Social
26 Security Administration, 454 F.3d 1050, 1054-56 (9th Cir. 2006) (discussing contours of
 application of harmless error standard in social security cases).

27 ²In its remand order, the Appeals Council noted that on January 25, 2007, plaintiff filed
 28 another application for benefits. The Appeals Council ordered the duplicate application to be
 merged with the instant case, and ordered the ALJ to address both applications in his decision.
 (AR 232).

1 which the ALJ heard testimony from plaintiff, a medical expert, and a vocational
2 expert. (AR 414-37; 517-40).

3 On February 2, 2009, the ALJ determined that plaintiff was not disabled
4 through the date of the decision (“2009 Decision”). (AR 205-17; 480-92). On
5 April 24, 2009, the Appeals Council affirmed the 2009 Decision. (AR 193; 493).

6 On November 23, 2009, in Case No. EDCV 09-926 RC, a judgment was
7 entered in the United States District Court for the Central District of California
8 based upon the parties’ Stipulation to Voluntary Remand Pursuant to Sentence 4
9 of 42 U.S.C. § 405(g), reversing and remanding the case for further proceedings.
10 (AR 545-46). On December 16, 2009, the Appeals Council again remanded the
11 case for a new hearing. (AR 543-44). In its remand order, the Appeals Council
12 noted that the 2009 Decision mischaracterized some of the medical evidence, and
13 ordered the ALJ on remand to re-evaluate plaintiff’s mental impairment and
14 plaintiff’s credibility. (AR 543-44). On March 10, 2010, a post-remand hearing
15 was held before a different ALJ (“2010 Hearing”) during which the ALJ heard
16 testimony from plaintiff (who was represented by counsel), a medical expert, and a
17 vocational expert. (AR 453-76).

18 On April 2, 2010, the new ALJ issued his decision, incorporating by
19 reference the 2009 Decision, and supplementing such decision. (AR 441-49). The
20 ALJ again determined that plaintiff was not disabled through the date of the
21 decision (“2010 Decision”). (AR 449). Specifically, the ALJ found: (1) plaintiff
22 suffered from the following severe impairments: osteoporosis, obesity, depressive
23 disorder (not otherwise specified), psychophysiological reactions to physical
24 conditions, and personality disorder (not otherwise specified) (AR 443);
25 (2) plaintiff’s impairments, considered singly or in combination, did not meet or
26 medically equal one of the listed impairments (AR 443-44); (3) plaintiff retained
27 the residual functional capacity to perform light work (20 C.F.R. § 416.967(b))
28

///

1 with certain limitations³ (AR 444); (4) plaintiff could not perform her past relevant
 2 work (AR 447); (5) there are jobs that exist in significant numbers in the national
 3 economy that plaintiff could perform, specifically porter mail clerk, cleaner and
 4 sewing machine operator (AR 447-48); and (6) plaintiff's allegations regarding
 5 her limitations were not credible to the extent they were inconsistent with the
 6 ALJ's residual functional capacity assessment (AR 446).

7 **III. APPLICABLE LEGAL STANDARDS**

8 **A. Sequential Evaluation Process**

9 To qualify for disability benefits, a claimant must show that the claimant is
 10 unable to engage in any substantial gainful activity by reason of a medically
 11 determinable physical or mental impairment which can be expected to result in
 12 death or which has lasted or can be expected to last for a continuous period of at
 13 least twelve months. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citing
 14 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant incapable of
 15 performing the work claimant previously performed and incapable of performing
 16 any other substantial gainful employment that exists in the national economy.
 17 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.
 18 § 423(d)(2)(A)).

19 In assessing whether a claimant is disabled, an ALJ is to follow a five-step
 20 sequential evaluation process:

21 (1) Is the claimant presently engaged in substantial gainful activity? If
 22 so, the claimant is not disabled. If not, proceed to step two.

23 ///

24
 25 ³The ALJ determined that plaintiff: (1) could lift and/or carry 10 pounds frequently and
 26 20 pounds occasionally; (2) could sit, stand and/or walk six hours in an eight-hour workday; (3)
 27 could occasionally balance, stoop, kneel, crouch, and crawl, and could occasionally climb ramps,
 28 stairs, ladders, ropes or scaffolds; (4) could not work on dangerous machinery; and (5) is limited
 to entry level work and tasks involved with things rather than people. (AR 444).

- 1 (2) Is the claimant's alleged impairment sufficiently severe to limit
2 claimant's ability to work? If not, the claimant is not disabled.
3 If so, proceed to step three.
- 4 (3) Does the claimant's impairment, or combination of
5 impairments, meet or equal an impairment listed in 20 C.F.R.
6 Part 404, Subpart P, Appendix 1? If so, the claimant is
7 disabled. If not, proceed to step four.
- 8 (4) Does the claimant possess the residual functional capacity to
9 perform claimant's past relevant work? If so, the claimant is
10 not disabled. If not, proceed to step five.
- 11 (5) Does the claimant's residual functional capacity, when
12 considered with the claimant's age, education, and work
13 experience, allow claimant to adjust to other work that exists in
14 significant numbers in the national economy? If so, the
15 claimant is not disabled. If not, the claimant is disabled.

16 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th
17 Cir. 2006) (citing 20 C.F.R. §§ 404.1520, 416.920).

18 The claimant has the burden of proof at steps one through four, and the
19 Commissioner has the burden of proof at step five. Bustamante v. Massanari, 262
20 F.3d 949, 954 (9th Cir. 2001) (citing Tackett); see also Burch, 400 F.3d at 679
21 (claimant carries initial burden of proving disability).

22 **B. Standard of Review**

23 Pursuant to 42 U.S.C. section 405(g), a court may set aside a denial of
24 benefits only if it is not supported by substantial evidence or if it is based on legal
25 error. Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir.
26 2006) (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457
27 (9th Cir. 1995)). Substantial evidence is "such relevant evidence as a reasonable
28 mind might accept as adequate to support a conclusion." Richardson v. Perales,

1 402 U.S. 389, 401 (1971) (citations and quotations omitted). It is more than a
 2 mere scintilla but less than a preponderance. Robbins, 466 F.3d at 882 (citing
 3 Young v. Sullivan, 911 F.2d 180, 183 (9th Cir. 1990)).

4 To determine whether substantial evidence supports a finding, a court must
 5 “consider the record as a whole, weighing both evidence that supports and
 6 evidence that detracts from the [Commissioner’s] conclusion.” Aukland v.
 7 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (quoting Penny v. Sullivan, 2 F.3d
 8 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming
 9 or reversing the ALJ’s conclusion, a court may not substitute its judgment for that
 10 of the ALJ. Robbins, 466 F.3d at 882 (citing Flaten, 44 F.3d at 1457).

11 **IV. DISCUSSION**

12 Plaintiff contends that a reversal or remand is warranted because the ALJ
 13 (1) failed properly to consider the opinions of plaintiff’s treating physician, Dr.
 14 Salvador E. LaSala; (2) failed properly to consider the opinions of a state agency
 15 reviewing psychiatrist, Dr. A. Schrift; and (3) failed properly to assess plaintiff’s
 16 residual functional capacity. (JS at 3-9, 14-17, 19-22). As discussed in detail
 17 below, plaintiff is not entitled to a reversal or remand on any of these grounds.

18 **A. The ALJ Properly Evaluated the Medical Evidence**

19 **1. Pertinent Law**

20 In Social Security cases, courts employ a hierarchy of deference to medical
 21 opinions depending on the nature of the services provided. Courts distinguish
 22 among the opinions of three types of physicians: those who treat the claimant
 23 (“treating physicians”) and two categories of “nontreating physicians,” namely
 24 those who examine but do not treat the claimant (“examining physicians”) and
 25 those who neither examine nor treat the claimant (“nonexamining physicians”).
 26 Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1996) (footnote reference omitted). A
 27 treating physician’s opinion is entitled to more weight than an examining
 28 physician’s opinion, and an examining physician’s opinion is entitled to more

1 weight than a nonexamining physician's opinion.⁴ See id. In general, the opinion
 2 of a treating physician is entitled to greater weight than that of a non-treating
 3 physician because the treating physician "is employed to cure and has a greater
 4 opportunity to know and observe the patient as an individual." Morgan v.
 5 Commissioner of Social Security Administration, 169 F.3d 595, 600 (9th Cir.
 6 1999) (citing Sprague v. Bowen, 812 F.2d 1226, 1230 (9th Cir. 1987)).

7 The treating physician's opinion is not, however, necessarily conclusive as
 8 to either a physical condition or the ultimate issue of disability. Magallanes v.
 9 Bowen, 881 F.2d 747, 751 (9th Cir. 1989) (citing Rodriguez v. Bowen, 876 F.2d
 10 759, 761-62 & n.7 (9th Cir. 1989)). Where a treating physician's opinion is not
 11 contradicted by another doctor, it may be rejected only for clear and convincing
 12 reasons. Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007) (citation and internal
 13 quotations omitted). The ALJ can reject the opinion of a treating physician in
 14 favor of another conflicting medical opinion, if the ALJ makes findings setting
 15 forth specific, legitimate reasons for doing so that are based on substantial
 16 evidence in the record. Id. (citation and internal quotations omitted); Thomas v.
 17 Barnhart, 278 F.3d 947, 957 (9th Cir. 2002) (ALJ can meet burden by setting out
 18 detailed and thorough summary of facts and conflicting clinical evidence, stating
 19 his interpretation thereof, and making findings) (citations and quotations omitted);
 20 Magallanes, 881 F.2d at 751, 755 (same; ALJ need not recite "magic words" to
 21 reject a treating physician opinion – court may draw specific and legitimate
 22 inferences from ALJ's opinion). "The ALJ must do more than offer his
 23 conclusions." Embrey v. Bowen, 849 F.2d 418, 421-22 (9th Cir. 1988). "He must
 24 set forth his own interpretations and explain why they, rather than the

25
 26 ⁴Cf. Le v. Astrue, 529 F.3d 1200, 1201-02 (9th Cir. 2008) (not necessary or practical to
 27 draw bright line distinguishing treating physicians from non-treating physicians; relationship is
 28 better viewed as series of points on a continuum reflecting the duration of the treatment
 relationship and frequency and nature of the contact) (citation omitted).

1 [physician's], are correct." Id. "Broad and vague" reasons for rejecting the
 2 treating physician's opinion do not suffice. McAllister v. Sullivan, 888 F.2d 599,
 3 602 (9th Cir. 1989).

4 Although the treating physician's opinion is generally given more weight, a
 5 nontreating physician's opinion may support rejecting the conflicting opinion of a
 6 claimant's treating physician. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir.
 7 1995). If a nontreating physician's opinion is based on independent clinical
 8 findings that differ from the findings of the treating physician, the nontreating
 9 physician's opinion may be considered substantial evidence. Id. at 1041 (citing
 10 Magallanes, 881 F.2d at 751). If that is the case, then the ALJ has complete
 11 authority to resolve the conflict.⁵ On the other hand, if the nontreating physician's
 12 opinion contradicts the treating physician's opinion but is not based on
 13 independent clinical findings, or is based on the clinical findings also considered
 14 by the treating physician, the ALJ can only reject the treating physician's opinion
 15 by giving specific, legitimate reasons based on substantial evidence in the record.
 16 Id. (citing Magallanes, 881 F.2d at 755); see Magallanes, 881 F.2d at 751-52
 17 (Substantial evidence that can support the conflicting opinion of a nonexamining
 18 medical advisor can include: laboratory test results, contrary reports from
 19 examining physicians, and testimony from the plaintiff that is inconsistent with the
 20 treating physician's opinions.).

21 **2. Dr. LaSala**

22 On February 19, 2010, Dr. LaSala completed a Work Capacity Evaluation
 23 (Mental) form in which he opined that plaintiff had marked to extreme limitations
 24 in her mental abilities and that such limitations would cause plaintiff to be absent
 25
 26

27

 28 ⁵Where there is conflicting medical evidence, the Secretary must assess credibility and
 resolve the conflict. Thomas, 278 F.3d at 956-57.

1 from work on average three or more days per month (“Dr. LaSala’s Opinions”).
2 (RT 565-66).

3 Plaintiff contends that the ALJ improperly rejected Dr. LaSala’s Opinions.
4 The Court concludes that a remand or reversal is not warranted on this basis.

5 First, Dr. LaSala’s opinions that plaintiff suffered significant cognitive
6 limitations conflict with and are unsupported by Dr. LaSala’s own treatment notes.
7 For example, as the ALJ noted, Dr. LaSala’s most recent treatment notes for
8 plaintiff (*i.e.*, Medication Progress Notes dated October 3, 2008 to August 10,
9 2009) reflect mental status examinations that were, on the whole, within normal
10 limits. (AR 446) (citing Exhibit 24F at 1-6 [AR 559-64]). Prior treatment notes
11 from Dr. LaSala (*i.e.*, from November 19, 2007 to September 3, 2008) reflect
12 mental status examinations that, apart from occasional anxious or depressed mood,
13 were also generally “within normal limits.” (AR 212) (citing Exhibit 23F [AR
14 403-13]). Dr. LaSala’s progress notes also indicate that plaintiff’s condition
15 improved with treatment. On November 19, 2007, plaintiff reported to Dr. LaSala
16 that she was “feeling better” and had improved sleep, energy and motivation. (AR
17 212) (citing Exhibit 23F at 12 [AR 413]). On August 4, 2008, plaintiff had “no
18 complaints” and “good sleep.” (AR 213) (citing Exhibit 23F at 3 [AR 404]). As
19 recently as May 13, 2009, Dr. LaSala reported that plaintiff had been taking her
20 prescribed medication without side effects and that plaintiff was “doing slightly
21 better” with “improving mood/energy/motivation.” (AR 560). Moreover, as the
22 ALJ also noted, Dr. LaSala’s finding that plaintiff would be stable if she was
23 compliant with her prescribed medication is inconsistent with the treating
24 physician’s assessment that plaintiff suffered significant cognitive limitations.
25 (AR 446) (citing Exhibit 24F at 1 [AR 559]). Therefore, to the extent the ALJ
26 rejected Dr. LaSala’s opinions, he properly did so for clear and convincing reasons
27 based on substantial evidence. See Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th
28 Cir. 2005) (A discrepancy between a physician’s notes and recorded observations

1 and opinions and the physician's assessment of limitations is a clear and
2 convincing reason for rejecting the opinion.); see also *Connett v. Barnhart*, 340
3 F.3d 871, 875 (9th Cir. 2003) (treating physician's opinion properly rejected
4 where physician's treatment notes "provide no basis for the functional restrictions
5 he opined should be imposed on [the claimant]"). While plaintiff suggests that Dr.
6 LaSala's medication progress notes actually support the treating physician's
7 opinion that plaintiff has significant mental limitations (JS 6-7), this Court will not
8 second-guess the ALJ's reasonable interpretation that they do not, even if such
9 evidence could give rise to inferences more favorable to plaintiff.

10 Second, the ALJ also properly rejected Dr. LaSala's opinions because they
11 were unsupported by the record as a whole. See *Tonapetyan v. Halter*, 242 F.3d
12 1144, 1149 (9th Cir. 2001) (ALJ need not accept treating physician's opinions that
13 are conclusory and brief, or unsupported by clinical findings, or physician's own
14 treatment notes). For example, as the ALJ noted, the report of a July 23, 2004
15 mental examination of plaintiff reflected that plaintiff suffered from depression
16 and anxiety with some decreased energy and insomnia, but otherwise had mental
17 functioning that was within normal limits. (AR 214) (citing Exhibit 2F [AR 121-
18 24]). The examining physician indicated that plaintiff was "stable on []
19 medication" and that plaintiff's condition was expected to improve with
20 medication management and psychotherapy. (AR 124).

21 Third, as the ALJ noted, treatment records reflect that plaintiff did not
22 always follow Dr. LaSala's medication prescriptions. (AR 559, 592; see also AR
23 407, 408). As noted above, Dr. LaSala found that plaintiff's condition would be
24 stable if she was compliant with her prescribed medication. (AR 559). Thus, to
25 the extent Dr. LaSala's opinions are based on plaintiff's symptoms during periods
26 when plaintiff failed without justification to take her prescription medication, such
27 opinions cannot support a disability finding. A claimant who would otherwise be
28 found disabled within the meaning of the Social Security Act may be denied

1 benefits if she fails to follow prescribed treatment without justifiable cause. See
 2 Roberts v. Shalala, 66 F.3d 179, 183 (9th Cir. 1995), cert. denied, 517 U.S. 1122
 3 (1996); SSR 82-59; 20 C.F.R. § 416.930; see also Warre v. Commissioner of
 4 Social Security Administration, 439 F.3d 1001, 1006 (9th Cir. 2006)
 5 (“Impairments that can be controlled effectively with medication are not disabling
 6 for the purpose of determining eligibility for SSI benefits.”) (citations omitted).

7 Finally, based in part on the examining physician’s July 23, 2004 opinions,
 8 the testifying medical expert found no mental limitations for plaintiff beyond those
 9 already accounted for in the ALJ’s residual functional capacity assessment. (AR
 10 465-69). The medical expert’s testimony constituted substantial evidence
 11 supporting the ALJ’s decision since it is consistent with the examining physician’s
 12 opinions and underlying independent examinations. See Tonapetyan, 242 F.3d at
 13 1149 (holding that opinions of nontreating or nonexamining doctors may serve as
 14 substantial evidence when consistent with independent clinical findings or other
 15 evidence in the record); Andrews, 53 F.3d at 1041 (“reports of the nonexamining
 16 advisor need not be discounted and may serve as substantial evidence when they
 17 are supported by other evidence in the record and are consistent with it”); Morgan,
 18 169 F.3d at 600 (testifying medical expert opinions may serve as substantial
 19 evidence when “they are supported by other evidence in the record and are
 20 consistent with it”). Any conflict in the properly supported medical opinion
 21 evidence is the sole province of the ALJ to resolve. Andrews, 53 F.3d at 1041.

22 3. **Dr. Schrift**

23 In an August 9, 2004 Mental Residual Functional Capacity Assessment
 24 form, Dr. A. Schrift found, in pertinent part, that plaintiff had marked limitations
 25 in her abilities to (i) understand and remember detailed instructions, (ii) carry out
 26 detailed instructions; and (iii) interact appropriately with the general public. (AR
 27 140-41). Dr. Schrift opined that plaintiff could “sustain simple repetitive tasks
 28 with adequate pace and persistence,” could “adapt and relate to coworkers and

1 [supervisors]," but could not work with the public. (AR 142). Plaintiff contends
 2 that the ALJ improperly rejected Dr. Schrift's opinions. The Court disagrees.

3 The ALJ was not required to discuss at length medical evidence which he
 4 did not reject. See Howard ex rel. Wolff v. Barnhart ("Howard"), 341 F.3d 1006,
 5 1012 (9th Cir. 2003) (citations omitted). An ALJ must provide an explanation
 6 only when he rejects "significant probative evidence." See Vincent v. Heckler,
 7 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation omitted). Here, the ALJ stated
 8 essentially that he had "read and considered" Dr. Schrift's August 9, 2004 Mental
 9 Residual Functional Capacity Assessment form, and that he gave "significant
 10 weight" to the opinions expressed therein – which opinions the ALJ found to be
 11 generally consistent with plaintiff's residual functional capacity assessment and
 12 supported by the evidence as a whole. (AR 447). Plaintiff fails to demonstrate
 13 that Dr. Schrift's findings that plaintiff could perform "simple repetitive tasks with
 14 adequate pace and persistence," could "adapt and relate to coworkers and
 15 [supervisors]," and could not work with the public (AR 142) constitutes
 16 significant or probative evidence that is not already accounted for in the ALJ's
 17 residual functional capacity assessment for plaintiff which limits plaintiff to "entry
 18 level work and tasks involved with things rather than people." (AR 444). Again,
 19 the Court will not second-guess the ALJ's reasonable interpretation of the medical
 20 evidence, even if such evidence could give rise to inferences more favorable to
 21 plaintiff.

22 **B. The ALJ Properly Considered Plaintiff's Residual Functional
 23 Capacity**

24 Plaintiff argues that the ALJ erroneously omitted from plaintiff's residual
 25 functional capacity assessment significant mental limitations noted by Dr. LaSala
 26 in his February 10, 2010 Work Capacity Evaluation (Mental) form and various
 27 progress notes for plaintiff, and limitations noted by Dr. Schrift in his August 9,
 28 2004 Mental Residual Functional Capacity Assessment form. (JS at 19-21). The

1 Court disagrees. This claim is derivative of plaintiff's other claims and fails for
2 the reasons discussed above.

3 **V. CONCLUSION**

4 For the foregoing reasons, the decision of the Commissioner of Social
5 Security is affirmed.

6 LET JUDGMENT BE ENTERED ACCORDINGLY.

7 DATED: September 23, 2011

8
9 /s/
10 Honorable Jacqueline Chooljian
11 UNITED STATES MAGISTRATE JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28